



House of Representatives

General Assembly

File No. 782

January Session, 2009

Substitute House Bill No. 6680

House of Representatives, April 21, 2009

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STATE MARSHALS, WITNESS FEES AND THE SERVICE OF PROCESS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 34-105 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Any process, notice or demand in connection with any action or
4 proceeding required or permitted by law to be served upon a limited
5 liability company which is subject to the provisions of section 34-104,
6 may be served upon the limited liability company's statutory agent for
7 service by any proper officer or other person lawfully empowered to
8 make service by leaving a true and attested copy of the process, notice
9 or demand with such agent or, in the case of an agent who is a natural
10 person, by leaving it at such agent's usual place of abode in this state.

11 (b) If it appears from the records of the Secretary of the State that
12 such a limited liability company has failed to appoint or maintain a
13 statutory agent for service, or if it appears by affidavit endorsed on the

14 return of the officer or other proper person directed to serve any
15 process, notice or demand upon such a limited liability company's
16 statutory agent for service appearing on the records of the Secretary of
17 the State that such agent cannot, with reasonable diligence, be found at
18 the address shown on such records as the agent's address, service of
19 such process, notice or demand on such limited liability company may,
20 when timely made, be made by such officer or other proper person by:
21 (1) Leaving a true and attested copy thereof together with the required
22 fee at the office of the Secretary of the State or depositing the same in
23 the United States mails, by registered or certified mail, postage
24 prepaid, addressed to said office, and (2) depositing in the United
25 States mails, by registered or certified mail, postage prepaid, a true and
26 attested copy thereof, together with a statement by such officer that
27 service is being made pursuant to this section, addressed to such
28 limited liability company at its principal office.

29 (c) The Secretary of the State shall file the copy of each process,
30 notice or demand received by him as provided in subsection (b) of this
31 section and keep a record of the [day] date and hour of such receipt.
32 Service made as provided in this section shall be effective as of such
33 [day] date and hour.

34 (d) Notwithstanding subsections (a) and (b) of this section, any
35 process, notice or demand in connection with any action or proceeding
36 required or permitted by law to be served upon a limited liability
37 company which is subject to the provisions of section 34-104, may be
38 served upon any member of the limited liability company in whom
39 management of the limited liability company is vested or any manager
40 of the limited liability company by any proper officer or other person
41 lawfully empowered to make service by leaving a true and attested
42 copy of the process, notice or demand with such member or manager
43 or by leaving it at such member's usual place of abode in this state or,
44 in the case of a manager who is a natural person, at such manager's
45 usual place of abode in this state.

46 ~~[(d)]~~ (e) Nothing contained in this section shall limit or affect the

47 right to serve any process, notice or demand required or permitted by
48 law to be served upon a limited liability company in any other manner
49 permitted by law.

50 Sec. 2. Section 52-50 of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2009*):

52 (a) All process shall be directed to a state marshal, a constable or
53 other proper officer authorized by statute, or, subject to the provisions
54 of subsection (b) of this section, to an indifferent person. A direction on
55 the process "to any proper officer" shall be sufficient to direct the
56 process to a state marshal, constable or other proper officer.

57 (b) Process shall not be directed to an indifferent person [unless
58 more defendants than one are named in the process and are described
59 to reside in different counties in the state, or] unless, in case of a writ of
60 attachment, the plaintiff or one of the plaintiffs, or his or their agent or
61 attorney, makes oath before the authority signing the writ that the
62 affiant truly believes the plaintiff is in danger of losing his debt or
63 demand unless an indifferent person is deputed for the immediate
64 service of the writ or other process. The authority signing the writ shall
65 certify on the writ that he administered the oath and insert in the writ
66 the name of the person to whom it is directed, but he need not insert
67 the reason for such direction. Any process directed to an indifferent
68 person by reason of such an affidavit shall be abatable on proof that
69 the party making the affidavit did not have reasonable grounds, at the
70 time of making it, for believing the statements in the affidavit to be
71 true.

72 (c) Service of motions for modification, motions for contempt and
73 wage withholdings in any matter involving a beneficiary of care or
74 assistance from the state and in other IV-D child support cases may be
75 made by any investigator employed by the Commissioner of
76 Administrative Services or the Commissioner of Social Services.

77 (d) Service of motions for modification, motions for contempt and
78 wage withholdings in any matter involving child support, including,

79 but not limited to, petitions for support authorized under sections 17b-
80 745 and 46b-215, and those matters involving a beneficiary of care or
81 assistance from the state, may be made by a support enforcement
82 officer or support services investigator of the Superior Court.

83 (e) Borough bailiffs may, within their respective boroughs, execute
84 all legal process which state marshals or constables may execute.

85 Sec. 3. Section 52-56 of the general statutes is repealed and the
86 following is substituted in lieu thereof (*Effective October 1, 2009*):

87 (a) If any officer has commenced the service of any civil process
88 within his precinct, he may attach the property of, or serve the process
89 upon, any defendant named in the process outside of his precinct. An
90 officer shall not be deemed to have commenced service in any civil
91 action by process of foreign attachment or garnishment by service on
92 the garnishee therein, unless the garnishee has concealed in his
93 possession, at the time of the service, the property of the defendant or
94 is indebted to him.

95 (b) If there are two or more defendants, any of whom reside outside
96 of the precinct of the officer commencing service or, in any action in
97 case of attachment of property or in case of foreign attachment or
98 garnishment, if any defendant or garnishee resides outside of the
99 precinct of the officer commencing service, any officer may serve the
100 process upon such of the defendants or garnishees as reside within his
101 precinct, and may then (1) complete the service himself upon any
102 defendant or garnishee residing outside his precinct, or (2) deliver the
103 process to an officer of another precinct for service upon any
104 defendant or garnishee residing in the other precinct and each officer
105 serving the same shall endorse his actions thereon. The officer
106 completing the service shall include in his endorsement a copy of the
107 endorsement upon the writ of the officer commencing service and shall
108 return the process to court.

109 (c) In any action where process is permitted to be served upon the
110 Secretary of the State, [or] the Commissioner of Motor Vehicles,

111 [pursuant to sections 52-57, 52-59b, 52-62 and 52-63] the Attorney
112 General or the Insurance Commissioner, service of such process may
113 be made by any officer of any precinct having such process in his
114 hands for service. Service by an officer upon the Secretary of the State,
115 the Commissioner of Motor Vehicles, the Attorney General or the
116 Insurance Commissioner pursuant to this subsection shall constitute
117 the commencement of service within such officer's precinct and such
118 officer may then complete service as provided in subsection (a) or (b)
119 of this section.

120 (d) The execution or service of any capias issued pursuant to section
121 52-143 or 54-2a or any warrant or capias mittimus issued by a court or
122 family support magistrate in a family support matter may be made in
123 any precinct in the state by any state marshal of any precinct or any
124 special policeman appointed under section 29-1g, having such capias,
125 warrant or capias mittimus, or a copy thereof made by any
126 photographic, micrographic, electronic imaging or other process,
127 which clearly and accurately copies such original document, in his
128 hands for service.

129 (e) Any state marshal of any precinct may serve any person
130 confined in any correctional institution or community correctional
131 center in this state.

132 Sec. 4. Section 52-583 of the general statutes is repealed and the
133 following is substituted in lieu thereof (*Effective October 1, 2009*):

134 No civil action shall be brought against any sheriff, [sheriff's
135 deputy] state marshal or constable, for any neglect or default in his or
136 her office or duty, but within two years next after the right of action
137 accrues.

138 Sec. 5. Section 52-593a of the general statutes is repealed and the
139 following is substituted in lieu thereof (*Effective October 1, 2009*):

140 (a) Except in the case of an appeal from an administrative agency
141 governed by section 4-183, a cause or right of action shall not be lost

142 because of the passage of the time limited by law within which the
143 action may be brought, if the process to be served is personally
144 delivered to a state marshal, [authorized to serve the process]
145 constable or other proper officer within such time and the process is
146 served, as provided by law, within thirty days of the delivery.

147 (b) In any such case, the [state marshal] officer making service shall
148 endorse under oath on such [state marshal's] officer's return the date of
149 delivery of the process to such [state marshal] officer for service in
150 accordance with this section.

151 Sec. 6. Section 52-260 of the general statutes is amended by adding
152 subsection (h) as follows (*Effective October 1, 2009*):

153 (NEW) (h) The fees of any witness summoned by a party other than
154 the state to testify in any action or proceeding shall be paid to the
155 witness by such party on the day of attendance of such witness.

156 Sec. 7. Section 2-7 of the general statutes is repealed and the
157 following is substituted in lieu thereof (*Effective October 1, 2009*):

158 (a) Whenever the Governor, the members of the General Assembly
159 or the president pro tempore of the Senate and the speaker of the
160 House of Representatives call a special session of the General
161 Assembly, the Secretary of the State shall give notice thereof by (1)
162 mailing a true copy of the call of such special session, by first class
163 mail, evidenced by a certificate of mailing, to each member of the
164 House of Representatives and of the Senate at his or her address as it
165 appears upon the records of [said secretary] the Secretary of the State
166 not less than ten nor more than fifteen days prior to the date of
167 convening of such special session, or [by] (2) causing a true copy of the
168 call to be delivered personally to each member by a state marshal,
169 constable, state policeman or indifferent person at least twenty-four
170 hours prior to the time of convening of such special session. If the state
171 marshal, constable, state policeman or indifferent person is unable to
172 deliver a true copy of the call personally to the member, such officer or
173 person shall leave a true copy of the call at the member's usual place of

174 abode at least twenty-four hours prior to the time of convening of such
175 special session.

176 (b) Whenever the Secretary of the State is required to reconvene the
177 General Assembly pursuant to article third of the amendments to the
178 Constitution of Connecticut, [said secretary] the Secretary of the State
179 shall give notice thereof by (1) mailing a true copy of the call of such
180 reconvened session, by first class mail, evidenced by a certificate of
181 mailing, to each member of the House of Representatives and of the
182 Senate at his or her address as it appears upon the records of [said
183 secretary] the Secretary of the State not less than five days prior to the
184 date of convening of such reconvened session, or [by] (2) causing a
185 true copy of the call to be delivered personally to each member by a
186 state marshal, constable, state policeman or indifferent person at least
187 twenty-four hours prior to the time of convening of such reconvened
188 session. If the state marshal, constable, state policeman or indifferent
189 person is unable to deliver a true copy of the call personally to the
190 member, such officer or person shall leave a true copy of the call at the
191 member's usual place of abode at least twenty-four hours prior to the
192 time of convening of such reconvened session.

193 (c) Whenever a state marshal, constable, state policeman or
194 indifferent person serves notice of a special session pursuant to
195 subsection (a) of this section or a reconvened session pursuant to
196 subsection (b) of this section, such officer or person shall file a return of
197 service with the Secretary of the State endorsing his or her actions
198 thereon and indicating the manner in which the member of the House
199 of Representatives or of the Senate was served and, if the true copy of
200 the call was left at the member's usual place of abode, the efforts made
201 by such officer or person to deliver the true copy of the call personally
202 to the member. If such officer or person files a return of service
203 indicating that the true copy of the call was left at the member's usual
204 place of abode, the Secretary of the State shall immediately notify by
205 telephone and electronic mail the speaker of the House of
206 Representatives, in the case of a member of the House of
207 Representatives, or the president pro tempore of the Senate, in the case

208 of a member of the Senate, regarding the receipt of such return of
 209 service, and the speaker of the House of Representatives or the
 210 president pro tempore of the Senate, as the case may be, shall make
 211 reasonable efforts to give notice of the special or reconvened session to
 212 such member.

213 (d) Whenever notice of a special session is served by state marshals,
 214 constables, state policemen or indifferent persons pursuant to
 215 subsection (a) of this section, such special session shall not be
 216 convened until the Secretary of the State certifies that he or she has
 217 received a return of service from a state marshal, constable, state
 218 policeman or indifferent person with respect to each member of the
 219 House of Representatives and of the Senate.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	34-105
Sec. 2	October 1, 2009	52-50
Sec. 3	October 1, 2009	52-56
Sec. 4	October 1, 2009	52-583
Sec. 5	October 1, 2009	52-593a
Sec. 6	October 1, 2009	52-260
Sec. 7	October 1, 2009	2-7

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes various changes to the methods of serving process which have no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6680*****AN ACT CONCERNING STATE MARSHALS, WITNESS FEES AND THE SERVICE OF PROCESS.*****SUMMARY:**

This bill makes a number of changes regarding service of process and witness fees. It:

1. adds an additional means of serving process on a limited liability company;
2. limits the circumstances when an indifferent person (someone other than a marshal or other proper officer) can serve process;
3. (a) allows an officer of any precinct to serve the secretary of the state or Department of Motor Vehicles (DMV) commissioner when service on that official is permitted by any law, rather than just under specific laws; (b) allows an officer of any precinct to serve the attorney general or insurance commissioner with any process permitted by law to be served on them; and (c) makes service on any of these state officials the start of service within the officer's precinct and the officer can then complete service outside of his or her precinct as allowed by law;
4. allows a state marshal of any precinct to serve anyone confined in a correctional institution or community correctional center in the state;
5. requires a lawsuit against a state marshal for neglect or default of office or duty to be brought within two years after the right of action accrues (other statutes provide general statutes of limitations such as two years for negligence and three years for an oral contract);

6. provides that a cause of action is not lost by missing a statute of limitations if the process to be served is personally delivered to a constable or other proper officer within the required time frame and the process is served within 30 days of delivery (see BACKGROUND)(§ 5);
7. requires a party other than the state who summons a witness to testify in any action or proceeding to pay the witness when he or she attends (§ 6); and
8. makes changes to the way the call of a special session is served on legislators when the secretary of the state has notice of the call served by a state marshal, constable, state police officer, or indifferent person.

EFFECTIVE DATE: October 1, 2009

§ 1 — SERVICE ON LIMITED LIABILITY COMPANIES

The bill adds an additional means of serving process on a limited liability company.

Under current law, a proper officer or anyone empowered to make service can serve process on a limited liability company by (1) serving its statutory agent or (2) serving the secretary of the state's office and mailing a copy to the limited liability company's principal office, if the secretary's records show that there is no statutory agent or the agent cannot be found with reasonable diligence at the address in the records.

The bill also allows service on any manager or member vested with management of a limited liability company. Service can be made by leaving a copy with the person, at the member's usual place of abode in the state, or at the manager's usual place of abode in the state if the manager is a natural person.

§ 2 — SERVICE OF PROCESS BY AN INDIFFERENT PERSON

By law, a state marshal, constable, other proper officer, or an

indifferent person can serve process. Current law allows an indifferent person to serve process only when (1) more than one defendant is named in the process and the defendants reside in different counties or (2) for an attachment, a plaintiff makes an oath before the authority signing the writ that he or she is in danger of losing the debt or demand unless an indifferent person is deputed for immediate service. The bill eliminates the first provision and only allows an indifferent person to provide immediate service of an attachment.

A number of statutes requiring service of process for particular purposes allow service by an indifferent person as well as other proper officers (such as serving subpoenas and certain environmental protection orders). The bill's change appears to limit the ability of an indifferent person to serve process under those provisions as well.

By law, unchanged by the bill, an indifferent person is authorized to serve a copy of the complaint in a probate appeal, regardless of the general provisions on when an indifferent person can serve process (CGS § 45a-186(b)).

§ 3 — SERVICE OUTSIDE OF PRECINCT AND SERVICE ON CERTAIN STATE OFFICIALS

Generally, the law allows state marshals and other proper officers to serve process in their precincts (a state marshal's precinct is the county for which he or she is appointed). But they may serve process outside of their precincts in certain circumstances, such as when an action involves more than one defendant and the officer begins by serving process on a defendant who resides within his or her precinct.

The law allows an officer of any precinct to serve process on the secretary of the state or DMV commissioner when those officials can be served on behalf of a:

1. voluntary association;
2. nonresident individual, foreign partnership, foreign voluntary association, or executor or administrator for one of them under

certain circumstances that allow the courts to exercise jurisdiction;

3. nonresident in an action for negligent operation of motor vehicle; or
4. motor vehicle operator or owner in an action for negligently operating a motor vehicle if the person cannot be found after making diligent effort.

The bill allows an officer of any precinct to serve the secretary or DMV commissioner as permitted by any other law as well. It also allows an officer of any precinct to serve any process permitted by law to be served on the attorney general or insurance commissioner.

The bill makes service on one of these officials the start of service within the officer's precinct and the officer can then complete service outside his or her precinct as allowed by law.

§ 4 — LAWSUITS AGAINST STATE MARSHALS

The bill requires a lawsuit against a state marshal for neglect or default of his or her office or duty to be brought within two years after the right of action accrues. Under current law, this applies to sheriffs, deputy sheriffs, and constables. The bill repeals the provision for deputy sheriffs. The positions of sheriffs and deputy sheriffs were eliminated in 2000 and state marshals took over their service of process functions.

§ 7 — SERVICE ON MEMBERS OF THE GENERAL ASSEMBLY

The law requires the secretary of the state to give notice of a special session of the General Assembly by (1) mailing a copy of the call of the session to each legislator between 10 and 15 days before the session convenes or (2) having a copy delivered to each member by a state marshal, constable, state police officer, or indifferent person at least 24 hours before it convenes. Similarly, for a reconvened session to consider acts vetoed by the governor, the call must be (1) mailed at least five days before the session convenes or (2) delivered to each

legislator at least 24 hours before the session.

The bill allows a person making personal delivery of the call to leave a true copy of it at the legislator's usual place of abode at least 24 hours before the session convenes if he or she cannot deliver it personally. It also requires the person to file a return of service with the secretary endorsing the actions taken and indicating the way the legislator was served and the efforts made to deliver the call personally, if it was left at the legislator's abode. If the return indicates that the call was left at a legislator's abode, the secretary must immediately call or email the House speaker or Senate president pro tempore, whichever is appropriate, and that official must make reasonable efforts to give notice of the session to the legislator.

When the secretary has the call for a special session personally delivered, the bill prohibits the session from convening until the secretary certifies that she received a return of service for each legislator.

BACKGROUND

Witness Fees

By law, witnesses receive the following fees:

1. 50 cents per day for attending court and the same per-mile rate for travel to the place of trial as is paid to state employees for travel;
2. \$100 plus mileage (taxable as part of costs) for police officers and firefighters summoned in a criminal or civil proceeding if they are not compensated by their employer for the time;
3. an extra \$2 for each day that a material witness in a pending criminal proceeding is confined;
4. a reasonable fee determined by the court (taxable as costs) for practitioners of the healing arts, dentists, registered nurses, advanced practice nurses, licensed practical nurses,

psychologists, and real estate appraisers who give expert testimony, including by deposition; and

5. a reasonable fee determined by the court and paid by a party who subpoenas a licensed public accountant to testify in any action or proceeding.

Related Case

A Superior Court judge recently interpreted the statute that preserves lawsuits if the process is delivered to a state marshal within the required time frame to file the action. The judge noted that the statute was amended as part a large bill to reform the sheriffs system and it was one of many statutes amended to give state marshals, instead of sheriffs, the power to serve process. This particular statute was amended to replace the broader term “officer,” which would have included constables and other proper officers who are authorized to serve process, with “state marshal.” The judge concluded that the amendment was not intended to exclude process served by constables and a proper interpretation of the statute allowed it to apply to process given to a constable (*Abitz v. Fierer*, 44 CLR 820 (January 15, 2008)).

Related Bill

HB 6707, reported favorably by the Judiciary Committee, contains the same provision on preserving lawsuits when process is delivered to a constable or other proper officer.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0 (04/03/2009)